

1958

April 10

NEW HAMPSHIRE LAW LIBRARY

OCT 01 1998

CONCORD, N.H.

Forrest H. Bumford, Director
Bureau of Occupational Health
61 So. Spring Street
Concord, New Hampshire

Dear Mr. Bumford:

In your letter of April 7 you refer to a recent request from Morris D. Stein, Esq., for a copy of the report of an investigation conducted by your Bureau at the McLeod Company of Nashua. The investigation was prompted by the death of an employee of this company allegedly due to carbon tetrachloride poisoning. Copies of the report have already been given to the Labor Commissioner and to the Workmen's Compensation insurance carrier. You have refused to furnish a copy of the report to Mr. Stein who represents the widow of the deceased employee in pending proceedings under the Workmen's Compensation law. As a basis for refusal you refer to the long established policy of your Bureau relative to releasing copies of occupation health investigation reports. In your letter of April 7 you advised Mr. Stein that the problem has been referred to the Attorney General for comment.

Under your present policy the reports in question may be obtained in either of the two following ways:

1. the person desiring a copy of the report may obtain a court order requiring its production; or
2. a copy of the report will be furnished to anyone who first obtains the consent of the owner of the premises where the investigation is made.

In Lefebvre v. Sommersworth Shoe Co., 93 N.H. 354, a motion was filed in court requesting discovery of reports contained in the files of the Division of Industrial Hygiene. The Supreme Court rejected the contention that the motion constituted a suit against the State and sustained an order requiring the production of the reports. While this decision goes no further than to hold that the production of state files will be ordered

in behalf of a person establishing an equitable right to information contained therein, the reasoning of the court in arriving at this result should be of substantial assistance to you in evaluating the reasonableness of the existing practice.

No essential difference is seen between the records sought by Mr. Stein and those involved in the Lefebvre case. They are not public records in the sense of records made for the purpose of furnishing information to the public as a whole. No general right of inspection exists. In order to be entitled to inspect records of this sort an equitable right must be established. Lefebvre v. Scorsworth Co., supra 355. The individual seeking inspection must show that he has a legitimate interest in them as contrasted to mere curiosity. The following quotation from the Lefebvre case (page 357) would appear to furnish an excellent guide to your Bureau in the formulation of a policy in cases such as this:

"The only interest the state has in the present controversy between the estate of the employee and the defendant company is that justice be done and to that end that a full disclosure of the truth be made."

Your existing policy does not contemplate that all persons desiring inspection of the records first obtain a court order. On the contrary by making the records available to the owner of the inspected premises and to others with his consent, you recognize that certain individuals possess a sufficient interest in the investigation reports to warrant inspection. Nothing in the Lefebvre case requires that a court order be obtained prior to disclosure of your records. Making the reports available to persons with a legitimate interest in receiving them would avoid unnecessary expense of obtaining a formal court order.

However, your present practice appears defective in one respect. The ultimate decision as to whether or not a court order must be obtained now rests with the owner of the inspected premises. It is not seen why his judgment should be substituted for the judgment of the Bureau of Occupational Health in determining whether or not a person requesting inspection of your records has a legitimate interest therein. It would seem your department as custodian of these records should have the final say as to whether the person seeking inspection of the records has a legitimate interest.

In the final analysis this is a matter of policy to be determined by your agency. It is hoped that the foregoing will assist you in this respect so as to avoid situations like the present one where an individual with a direct interest in the contents of your report is denied permission to inspect it because the owner of the inspected premises whose

Forrest H. Bumford, Director

-3-

interests are obviously adverse refuses to consent to inspection. In other words it would appear that Mr. Stein representing the widow of the deceased employee, in the instant case, is as much entitled to a copy of the report as the owner of the inspected premises or his insurance carrier.

Very truly yours,

Elmer T. Bourque
Assistant Attorney General

ETB/lt

P.S. Returned herewith please find material forwarded to us in your letter of April 7, 1958.

E.T.B.